

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Core Communications, Inc. for	)	
Forbearance under 47 U.S.C. §160(c)	)	
From Rate Regulation Pursuant to §251(g)	)	WC Docket No. 06-100
And for Forbearance from the Rate	)	
Averaging and Integration Regulation	)	
Pursuant to §254(g).	)	

COMMENTS IN OPPOSITION TO PETITION OF FORBEARANCE

Embarq Corporation<sup>1</sup> (Embarq), on behalf of its local operating companies, interexchange carrier and wireless operations, offers the following initial comments in response to the Petition of Core Communications, Inc. for Forbearance requesting that the Federal Communications Commission (Commission) forbear from enforcement of 47 U.S.C. §§ 251(g) and 254(g) and related implementing rules. More specifically, Core Communications, Inc. (Core) requests that the Commission forbear from enforcing §251(g) and implementing rules “to the extent they apply to or regulate the rate for compensation for switched ‘exchange access, information access, and exchange services for such access to interexchange carriers and information service providers,’ pursuant to state and federal access charge rules.”<sup>2</sup> Underlying the request, Core claims that the Commission has been “bullied by incumbent LECs” and thwarted in its reform efforts due to the “overwhelming strength of

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<sup>1</sup> Embarq Corporation is the newly created entity comprised of the local exchange operations in the former Sprint Nextel ILEC service territories.

<sup>2</sup> Petition for Forbearance, Core Communications, Inc. (Core Petition), page 2.

the rural LEC and Bell Operating Company lobbies” that make reform next to impossible.<sup>3</sup> Core’s solution: either affirmatively grant Core’s request or simply let it take effect through inaction.<sup>4</sup> Embarq has more faith in the Commission’s ability to fashion an appropriate resolution to these complex issues.

Granting the Forbearance Petition is Not in the Public Interest. These matters should be decided in the Inter-carrier Compensation Docket.

The Commission is given the power to forbear from applying any regulation if it determines that doing so meets the standards of 47 U.S.C. §160, including that forbearance is consistent with the public interest.<sup>5</sup> In support of its petition, Core offers the cursory claims that granting the petition will reduce regulatory arbitrage and promote competition by leveling the inter-carrier compensation playing field.<sup>6</sup> While Embarq agrees that regulatory arbitrage is an issue that must be addressed and that existing inter-carrier compensation regimes should be re-examined, granting the forbearance petition is not the answer and the petition must be denied.

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<sup>3</sup> *Id.*, p. 4.

<sup>4</sup> *Id.*

<sup>5</sup> Core’s Petition must satisfy each prong of 47 U.S.C. §160. Under that statute, Core must prove that enforcement is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; enforcement of such regulation is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. §160(a). Although Embarq focuses these comments on the public interest prong, Core fails to justify its petition under any prong. Failure to meet any one prong results in denial. *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order, rel. Oct. 18, 2004, para. 15.

<sup>6</sup> Core Petition, pages 19-20.

The Commission currently has before it a comprehensive docket examining these issues.<sup>7</sup> The Commission has taken hundreds of comments from interested parties and received numerous comprehensive reform proposals.<sup>8</sup> The Commission's FNPRM in the Intercarrier Compensation Docket lays out the myriad of goals it is wrestling with in that docket, including the encouragement of an efficient use of and investment in telecommunications networks, the development of efficient competition, the preservation of universal service, and competitive and technological neutrality.<sup>9</sup>

These issues are complex, inter-related and of vital importance to carriers and customers alike. Instead of resolving these issues in that comprehensive docket with abundant record evidence, Core proposes an end-around to the process via the filing of a forbearance petition. In support of its petition, Core offers only cursory analysis and assumptions. Core urges the simplistic belief that granting the petition solves all of these issues by subjecting, for rate setting purposes, all telecommunications carriers and all

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<sup>7</sup> *In Re: Developing a Unified Intercarrier Compensation Regime (Intercarrier Compensation Docket)*, CC Docket No. 01-92. The Commission specifically recognizes the interrelationship between access charge reform and the Commission's rate averaging and rate integration requirements codified in §254(g). See, Further Notice of Proposed Rulemaking (FNPRM), rel. March 3, 2005, para. 63.

<sup>8</sup> *Id.*, Further Notice of Proposed Rulemaking (FNPRM), rel. March 3, 2005, para. 2, 39-59. The Commission received 75 comments and 62 reply comments to the NPRM and over 175 comments and reply comments to the FNPRM from individual carriers and economist, industry groups and associations, consumer advocates, and state commissions.

<sup>9</sup> *Id.*, para. 29-36. Additional criteria noted by the Commission include the impact of any changes on network interconnection rules, the Commission's legal authority regarding intrastate mechanisms, and numerous implementation issues. *Id.*, para. 34-36.

traffic, without regard to jurisdiction, to 47 U.S.C. §251(b)(5). Moreover, Core argues simply that the rate integration and averaging regulations of §254(g) are not necessary because competition is sufficient in even the most remote area to protect consumers from unreasonable or discriminatory rates without any analysis of how consumer rates might fluctuate without the rate averaging and rate integration obligations imposed under 47 U.S.C. §254(g).

Assuming that Core can somehow convince the Commission that it is in the public interest to decide these issues through granting (or simple inaction upon) its forbearance petition, it is not obvious that such a result would solve the totality of issues that Core believes.<sup>10</sup> For example, access charges, both intrastate and interstate, existed long before 47 U.S.C. §251(g), yet Core suggests that merely forbearing from 47 U.S.C. §251(g) necessarily eliminates the entire access charge regime.

Leaving aside the argument of whether 47 U.S.C. §251(b) can or does encompass interexchange traffic, local traffic, or both<sup>11</sup>, it is clear that the

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<sup>10</sup> Moreover, the Commission must carefully consider if forbearance in this instance would be consistent with Congressional intent when 47 U.S.C. §251(g) contemplates that the obligations that continue to apply under that section, should apply until "explicitly superseded by regulations prescribed by the Commission."

<sup>11</sup> See e.g. FNPRM, para. 79 ("In the 1996 Act, Congress adopted section 251(b) which, on its face, applies to all telecommunications.") and *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area.... We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.")

issue of whether forbearance from 47 U.S.C. §251(g) eliminates intrastate access and subjects intrastate, interexchange traffic to 47 U.S.C. §251(b) is hotly contested and an action that is sure to proceed to court if the Commission does as Core suggests. In fact, the Commission specifically sought comment in the Intercarrier Compensation Docket on its authority to replace intrastate access charges and, if so, whether a replacement mechanism must comply with the requirements of 47 U.S.C. §251(b)(5) and §252(d)(2).<sup>12</sup> Several parties questioned the Commission's authority under the very method Core advocates.<sup>13</sup> One such party, the National Association of Regulatory Utility Commissioners (NARUC) offers several pages of legal argument specifically against any attempts to extend 47 U.S.C. §251(g) and §251(b)(5) to intrastate access and against the ability of the Commission to reach intrastate access through the exercise of forbearance under 47 U.S.C. §160. "As the language makes clear, Section 160 only allows the FCC to forbear from applying a specific section of the statute that requires it to act. The FCC may not 'forbear' from applying provisions of the statute that it does not have

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<sup>12</sup> FNPRM, para. 79.

<sup>13</sup> See e.g., Comments of Pac-West Telecomm, Inc., et.al. at page 25 ("Further, the statutory basis for preemption is not clear. Section 251(g) does not clearly apply to intrastate communications."); Comments of XO Communications, Inc. in Response to the Further Notice of Proposed Rulemaking at pages 5-6 ("It is not clear whether the Commission has sufficient jurisdiction over some types of traffic. . . . However, Section 251(g) only applies to interconnection and nondiscrimination obligations previously imposed under consent decrees with the RBOCs and GTE. Intrastate access charges, . . . , were not explicitly mandated by the consent decrees. The rates for access, so long as they were applied on a nondiscriminatory basis, were subject to state commission jurisdiction and regulation. Thus, it is not clear that Section 251(g) provides an adequate basis to reform all intercarrier compensation either.")

authority to apply in the first instance.”<sup>14</sup> Clearly, forbearance of 47 U.S.C. §251(g), combined with the assertion through that action that intrastate access is necessarily implicated, will lead to continued uncertainty and legal wranglings when clarity and reasoned, thoughtful decision making on a comprehensive record is needed instead.

Conclusion

For the foregoing reasons, Core has not shown that granting its petition is in the public interest, particularly in light of the complexity and inter-relationship of the issues involved in intercarrier compensation and universal service. Although supportive of the need to reform intercarrier compensation, Embarq urges the Commission to address the myriad of issues in the appropriate forum, the Intercarrier Compensation Docket, and not through a forbearance petition. Core’s petition must be denied.

Respectfully Submitted,

EMBARQ CORPORATION



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<sup>14</sup> *Intercarrier Compensation Docket*, Initial Comments of the National Association of Regulatory Utility Commissioners, (May 23, 2005), page 14.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Embarq Local Operating Companies' Comments in WC Docket No. 06-100 was delivered by electronic mail or First Class, postage prepaid, U. S. Mail on this 5<sup>th</sup> day of June 2006 to the parties on the attached list.

  
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